

# SENATE BILL REPORT

## SB 5434

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As Passed Senate, April 2, 2007

**Title:** An act relating to the excise taxation of sales of tangible personal property originating from or destined to foreign countries.

**Brief Description:** Regarding excise taxation of sales of tangible personal property originating from or destined to foreign countries.

**Sponsors:** Senators Poulsen, Schoesler, Kastama, Zarelli, Prentice, Regala, Benton and Rasmussen; by request of Department of Revenue.

**Brief History:**

**Committee Activity:** Economic Development, Trade & Management: 1/31/07, 2/07/07 [DP-WM].

Ways & Means: 2/13/07, 2/19/07 [DP].

Passed Senate: 4/02/07, 45-0.

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### SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & MANAGEMENT

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Kastama, Chair; Kilmer, Vice Chair; Zarelli, Ranking Minority Member; Clements, Kauffman and Shin.

**Staff:** Jacob White (786-7448)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hatfield, Hewitt, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Rasmussen, Roach, Rockefeller, Schoesler and Tom.

**Staff:** Dianne Criswell (786-7433)

**Background:** The Import-Export Clause of the United States Constitution prohibits any imposts or duties from being levied on imports or exports. The Supreme Court has narrowed the scope of the Import-Export Clause in recent decades and Washington State Supreme Court decisions have cast doubt on the Department of Revenue's (DOR) ability to implement any rule that expands tax immunity beyond that found in statute.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

There is currently no statutory provision regarding taxation of import and export sales of tangible personal property. However, under the DOR rules, goods in the process of being imported or exported from this state are exempt from the business and occupation (B&O) and retail sales taxes.

**Summary of Bill:** A statutory exemption from B&O and retail sales taxation is created for the sale of tangible personal property in import or export commerce.

Property is in import commerce when it is in the process of import transportation or when it is flowing through Washington on its way to another destination. The property is no longer in the process of import transportation if the property is: put to actual use; resold after the property has arrived in this state or any other state; or processed in any way not related to shipping.

Property is in export commerce when the seller delivers the property to: the buyer at a destination in a foreign country; a carrier for transportation to a foreign country; the buyer at shipside or aboard the buyer's vessel, or any other vehicle of transportation where it is clear that the process of exportation of the property has begun; or the buyer in this state if the property is capable of being transported to a foreign destination under its own power, the seller files a shipper's export declaration, and the property is directly transported to a destination in a foreign country.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill seeks to maintain the status quo. It is intended to codify current agency practice on the taxation of sales of goods in import and export commerce. Not codifying the current rule could have dire consequences. If the rule were found invalid, it could cost importers more than \$60 million a year in taxes. This could result in consequences such as: damaging the reputation of Washington State as a leader in international trade; driving import business to ports outside the state; and increasing the cost of goods to Washington businesses and consumers.

**Persons Testifying:** PRO: Gil Brewer, DOR.